

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING  
FOAMS PRODUCTS LIABILITY ) MDL No. 2:18-mn-2873-RMG  
LITIGATION )  
 ) CASE MANAGEMENT ORDER NO. 16.B  
 )  
 ) This Order Relates to All Actions  
 )

## **AMENDED PROTOCOL FOR INITIAL BRIEFING OF DISPOSITIVE MOTIONS ON THE GOVERNMENT CONTRACTOR DEFENSE**

This Case Management Order supplements and amends the procedure by which the parties will brief dispositive motions on the government contractor defense.

1. On or before November 5, 2021, Defendants shall file one omnibus brief that is not to exceed 50 pages in length. Defendants are strictly limited to providing argument and record evidence relating only to the first factor of demonstrating government contractor immunity, as provided by *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988) and its progeny.
  - a. On or before November 15, 2021, three subgroups of Defendants that consist of (1) 3M, (2) Telomer-Based AFFF Manufacturers, and (3) Non-AFFF Manufacturing Defendants may file one supplemental brief each, not to exceed 15 pages in length, only if:
    - i. The supplementing Defendant group does not duplicate any argument or record evidence already provided in the omnibus brief;
    - ii. The supplementing Defendant group provides only argument and/or record evidence directly relating to the first *Boyle* factor; and
    - iii. The supplemental brief is approved by the Defendants' Coordination Committee ("DCC"), as evidenced by the DCC's certification that (1) the

supplemental brief does not duplicate any argument or record evidence already presented in the omnibus brief and (2) the record presented on the supplemental brief directly relates only to the first *Boyle* factor. Should the DCC refuse to so certify, the supplementing Defendant may promptly seek leave of Court to file its supplemental brief.

2. On or before December 22, 2021, Plaintiffs shall file one omnibus response in opposition to Defendants' omnibus motion, which is not to exceed 50 pages in length. Plaintiffs may also file one response in opposition, not to exceed 15 pages in length, to each of Defendants' supplemental briefs.
3. On or before January 21, 2022, Defendants may file one omnibus reply brief that is not to exceed 20 pages in length.

**AND IT IS SO ORDERED.**

s/ Richard Mark Gergel  
Richard Mark Gergel  
United States District Judge

September 13, 2021  
Charleston, South Carolina